

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE J.A.

No. 2 CA-JV 2018-0090
Filed November 19, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JV20160547
The Honorable Joan Wagener, Judge

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Dale Cardy, Deputy County Attorney, Tucson
Counsel for State

Joel Feinman, Pima County Public Defender
By Susan C. L. Kelly, Assistant Public Defender, Tucson
Counsel for Minor

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MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Brearcliffe concurred.

STARING, Judge:

¶1 Seventeen-year-old J.A. appeals from the juvenile court's disposition order continuing his placement on Juvenile Intensive Probation Supervision (JIPS) until his eighteenth birthday. We affirm the court's order.

¶2 In November 2016, J.A. was placed on a six-month term of juvenile probation after entering admissions for solicitation to commit burglary and disorderly conduct. In May 2017, he admitted violating his probation by failing to complete community service work and failing to comply with drug testing, and he also admitted having committed two burglaries in February and June 2016. On June 30, 2017, the juvenile court placed J.A. on a twelve-month term of JIPS for those adjudications.

¶3 In March 2018, the state filed a complaint to revoke J.A.'s probation on grounds that he had violated house arrest, failed to submit to drug screening as directed, tested positive for marijuana on five occasions, and failed to satisfy his "32 hour requirement"¹ for five successive weeks. Pursuant to an agreement between the parties, J.A. admitted the first two allegations and the other two were dismissed. And, at a disposition hearing on April 30, 2018, the juvenile court continued J.A. on JIPS until his eighteenth birthday in December 2018.

¶4 We review a juvenile court's disposition order for an abuse of discretion. *In re Maricopa Cty. Juv. Action No. JV-512016*, 186 Ariz. 414, 418 (App. 1996). On appeal, J.A. argues the juvenile court erred in extending J.A.'s probation "to the extent that the decision was influenced by [his] continued use of medical marijuana pursuant to the [Arizona Medical Marijuana Act, and his] failure to comply with probation directives that

¹As a condition of JIPS, J.A. agreed to "spend a minimum of 32 hours each week in any combination of . . . School or Court approved educational program; Treatment; Community Restitution; or Employment."

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were not reduced to written format.” J.A. acknowledges that “general performance on probation is always a matter to consider in determining disposition on petitions to revoke probation.” But he nonetheless maintains that “the only matters validly before the court in determining the appropriate resolution to J.A.’s violation of probation were his failure to comply with house arrest regulations on one day, and the failure to submit to drug testing on another.”

¶5 We cannot agree. J.A. is correct that his failure to comply with house arrest or drug testing were the only issues relevant to adjudication of the probation revocation complaint. But, at the disposition hearing that followed, the juvenile court was entitled to “consider reliable evidence of behavior for which there ha[d] been no adjudication.” *Id.* (quoting *In re Maricopa Cty. Juv. Action No. JV-510312*, 183 Ariz. 116, 119 (App. 1995)). At that hearing, the juvenile court challenged J.A.’s parents to reconsider the advisability of having obtained a medical marijuana card for him. But it also acknowledged that having a medical marijuana card was “a decision that he and his family have made,” and it stated, “I’m not going to tell him he can’t use marijuana if he has a medical marijuana card.”

¶6 The court also noted that J.A. had been “withdrawn from school prior to him being enrolled in another [educational] program,” apparently contrary to the probation officer’s oral direction. But, again, although the failure to follow an oral direction would not have been an adequate basis for a revocation adjudication, *see State v. Jones*, 163 Ariz. 498, 499 (App. 1990), we cannot say the court erred in considering information in the probation officer’s report, related to J.A.’s progress on probation, that J.A. did not dispute, *see Maricopa Cty. No. JV-512016*, 186 Ariz. at 418 (probation reports deemed “reliable sources of dispositional fact” when juvenile did not contend report was “false or misleading”).

¶7 Moreover, we see no basis to conclude the juvenile court relied on either J.A.’s medical marijuana use or his withdrawal from school in deciding to continue him on JIPS probation.² To the contrary, the court

²As the state points out, J.A.’s counsel requested that he be continued on probation, rather than terminated unsuccessfully. We are unpersuaded by J.A.’s assertion on appeal that he requested continuation of probation “solely to counter the [probation officer’s] legally incorrect recommendation that [he] be unsuccessfully terminated from probation due to continued use of marijuana pursuant to a valid medical marijuana card and medical supervision.” J.A. voluntarily entered admissions to

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clearly stated its disposition had “[n]othing to do with medical marijuana.” Rather, the court said its ruling “has to do with the fact that [J.A.] is not fulfilling his obligation to the Court and to the community,” as “[h]e’s been falsifying his records for Probation about how he’s meeting his 32 hour requirement”; “did not complete his community service work”; and “did not complete his letter of apology” to a victim, as he had been directed to do.

¶8 J.A. has failed to establish the juvenile court abused its discretion in ordering J.A.’s term on JIPS to continue until his eighteenth birthday. Accordingly, we affirm the disposition order.

probation violations, and he was properly advised that action would have some consequence. Under any circumstance, counsel might reasonably have argued in favor of continuing J.A.’s probation, which appears to have been one of the lesser consequences available to the juvenile court.